IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 30TH JANUARY 2007 / 10TH MAGHA 1928

FAO.No. 36 of 2007()

AGAINST THE ORDER DATED 16/01/2007 IN IA 2760/06. IN OS.411/2006 of PRL.SUB COURT,IRINJALAKUDA

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APPELLANT/PETITIONER

SAJAN, S/O.MALAKKARA JOSE,
KIZHAKKECHALAKUDY VILLAGE, MUKUNDAPURAM TALUK.

BY ADV. SRI.D.KISHORE
SRI.LIJI.J.VADAKEDOM

RESPONDENTS: RESPONDENT/RESPONDENTS.
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1. PEETER, S/O.PARATHARA VARGHESE,
MURINGOOR VADAKKUMMURI VILLAGE,
MUNKUNDAPURAM TALUK.

2. MARGAREETHA W/O.PETER,
MURINGOOR VADAKKUMURI VILLAGE,
MUKUNDAPURAM TALUK.

BY ADV.SRI.K.S.HARIHARAPUTHRAN

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 30/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KURIAN JOSEPH & K.T.SANKARAN,JJ.

F.A.O.No.36 of 2007

Dated this the 30th day of January, 2007

JUDGMENT

Sankaran,J.

The plaintiff in O.S.No.411/2006 on the file of the Sub Court, Irinjalakkuda, challenges the order in I.A.No.2760/2006 by which the prayer for injunction restraining the respondents from alienating the plaint schedule property was rejected by the court below.

2. The suit is for specific performance of an agreement for sale. An application for attachment was filed by the plaintiff and the respondents herein offered to furnish security and as directed by the court they had offered security. The present application is filed alleging that attempts were being made by the respondents to alienate the plaint schedule property to strangers. It is stated by the respondents that the property has already been settled in favour of their son, who is not a party to the suit at present. It is contended by the respondents that since the property has already been settled in favour of their son, a prayer for injunction against the respondents is not maintainable.

3. The court below dismissed the application mainly on the ground

that no evidence was adduced by the plaintiff/petitioner to show that he was ready and willing to execute the sale deed and that no notice was issued by him to the defendants before filing the suit. This finding was rendered by the court below at a premature stage. The court below could have arrived at this finding only after adducing evidence and after taking into account the facts and circumstances of the case. The dismissal of the application on the ground that no case was made out to show that the plaintiff was ready and willing to perform his part of the contract is not justified.

3. It is submitted by the counsel appearing on either side that an application is filed by the plaintiff to implead the son of the defendants as an additional defendant and that the said application is pending disposal. It is also submitted that an application for injunction is field against the person who is sought to be impleaded. The learned counsel for the appellant submits that in view of Section 19(b) of the Specific Relief Act, the son of the defendants is also bound to honour the agreement and that specific performance of contract could be enforced against him as well. But the son of the defendants is not made a party to the suit yet and without hearing him no finding based on the contention under Section 19(b) could be arrived at.

5. In the facts and circumstances of the case, the interests of the parties could be safeguarded in the following manner:-

(1) The trial court shall dispose of the application for impleading the son of the defendants at the earliest and at any rate within a period of one month.

(2) The findings rendered by the court below against the plaintiff in the order impugned are set aside.

(3) The disposal of this FAO or the order impugned shall not stand in the way of the plaintiff pursuing the application for injunction which he has already filed against the defendants as well as the person who is sought to be impleaded. The trial court shall consider the application for injunction also along with the application for impleading and pass appropriate orders within the aforesaid period of one month, untrammelled by any observation or finding in the order impugned.

(KURIAN JOSEPH, JUDGE)

(K.T.SANKARAN, JUDGE)

ahg.